

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2001-528

AUGUST 28, 2001

BAR HARBOR WATER COMPANY
AND THE TOWN OF BAR HARBOR
Petition for Approval of Reorganization, Liquidation
and Dissolution of, and Abandonment of Service by
Bar Harbor Water Company And for Approval of
Commencement of Service By the Town of Bar Harbor

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. Summary of Order

We allow the Town of Bar Harbor (Town) to acquire 80% to 100% of the stock of the Bar Harbor Water Company (Company). The Company is then allowed to transfer its assets and obligations to the Town, to discontinue water service in the Town of Bar Harbor, and to be liquidated and dissolved. We further allow the Town to acquire the assets and obligations of the Company, to furnish water service in the Town of Bar Harbor as a public water utility, and to establish initial rates for that service.

II. Procedural History

On July 31, 2001, the Town of Bar Harbor and the Bar Harbor Water Company filed with the Commission their joint petition (Joint Petition), pursuant to 35-A M.R.S.A. §§ 708, 1101, 1104, and 2102, to effect the transfer of the property, rights and obligations of the Company to the Town. The transfer is to be accomplished through the purchase of at least 80% of the Company stock by the Town, the transfer of the assets to the Town, and the dissolution of the Company. The Company and the Town have entered into a stock purchase agreement and a form of tender agreement.

III. Background

The Bar Harbor Water Company was created in 1874 by Legislative charter, P.&S.L. 1874, Chapter 449, and provides water utility service in the major part of the Town of Bar Harbor.

In recent years, the Town has become concerned about the Company's financial ability to maintain the plant serving the Town in a safe and reliable condition, to make additional investments to replace aging facilities, to serve new customers, to improve the public fire protection service and to meet regulatory requirements. The Directors of the Company recognize the potential advantages of better capitalization and the other economies a larger organization can provide. The Company has recently expressed an interest in selling its assets to another public or private organization.

The Town has determined that, in the best interest of the Town and the rate payers, it must take control of the Company and its assets and liabilities. On November 8, 2000, the Town initiated condemnation proceedings to take the assets of the Company by eminent domain. On November 29, 2000, the voters authorized the Town to enter into an agreement with the Company's Directors to acquire the Company, and further authorized temporary and permanent borrowings by the Town to finance the acquisition. On May 15, 2001, the Town voted to initiate additional condemnation proceedings to acquire the stock of the Company. The Town, after negotiation with the Directors of the Company, agreed to offer to purchase all of the outstanding shares of the Company and, if the Town's Tender Offer is successful, to transfer the Company's assets to the Town and liquidate the Company rather than proceeding to conclusion with the eminent domain actions. The Town will assume control of the assets of the Company and will operate the water system as a part of the Bar Harbor Public Works Department.

The Town and Directors of the Company have agreed upon a cash price of \$863 per share to be paid to each shareholder pursuant to the Tender Offer. According to the Joint Petition, the agreement was based upon an independent offer by an outside investor-owned water company seeking to merge with the Company, a thorough consideration of the fair market value of the assets of the Company, and a variety of other factors. The agreement requires the Town to pay liquidated damages, in the amount of \$87.00 per share, if the Internal Revenue Service fails to extend non-recognition treatment to the sale of the Tendered Shares. Liquidated damages would only be paid to shareholders that reinvest all of the proceeds from their Tendered Stock into "Qualified Stock".

The Town must acquire at least 80% of the current outstanding shares for the Tender Offer to be successful. If the Town is not able to purchase at least 80% of the shares, it can refuse to purchase the shares that have been tendered to it, and the Town would then continue eminent domain proceedings. As of the date of filing of this Joint Petition, approximately 77% of the shares of the Company have been tendered in accordance with the tender offer. The Town has since received assurance, from the Company's attorney, that, as of August 22, 2001, more than 80% of the shares have been tendered.

The Town intends to finance the acquisition of the water system through the issuance of approximately \$4 million in general obligation bonds. In the interim, the Town is seeking a credit facility to provide up to \$3 million in temporary financing. The credit facility will be replaced with permanent financing in the fall of 2001. The permanent financing will support the stock purchase price of \$2,400,003, refinancing approximately \$575,000 of Company debt to be assumed by the Town, and the retirement of approximately \$500,000 of remaining liabilities of the Company (e.g. the pension fund, leased water main improvements, acquisition expenses and liquidation damages). The Town is also expected to assume the \$775,000 SRF loan from the Maine Municipal Bond Bank to finance the construction of a new water storage facility.

Following purchase and sale and authorization to serve, the Town will initially operate the water utility pursuant to the rates and schedules currently in effect for the Company. The Company has a rate case pending before the Commission, and the Town expects to continue that case to its conclusion. A further rate adjustment will be necessary at the time that the permanent financing is closed. That rate adjustment will be to cover the new debt service related to the acquisition. The Town does not intend to seek an acquisition adjustment to recover, through amortization, any portion of the stock purchase price that exceeds the net book value of the Company's assets.

IV. Conclusion

We approve the requests contained in the Joint Petition because it appears to be in the best interest of the ratepayers of the water system. Nothing in this Order shall limit or restrict the powers of the Commission in determining and fixing any rate, fare, toll, or charge of the Town Water Department.

Accordingly, we

O R D E R

1. That the Town of Bar Harbor is authorized to acquire 80% to 100% of the 2,781 outstanding shares of the stock of the Bar Harbor Water Company.
2. That, upon acquisition of the stock of the Bar Harbor Water Company by the Town, the Company is authorized to sell, transfer, and convey to the Town of Bar Harbor by an appropriate instrument or instruments of conveyance all, and not less than all, of its plants, properties, assets, franchises, rights, and privileges, including, without limitations, lands, buildings, waters, water rights, springs, wells, reservoirs, tanks, standpipes, mains, pumps, pipes, machinery, fixtures, hydrants, meters, services, tools, equipment, and appliances used or useful in supplying water for domestic, commercial, industrial, and municipal purposes, as described more fully in the Purchase and Sale Agreement accompanying the joint petition filed with the Commission on May 14, 2001;
3. That the Town of Bar Harbor is authorized to purchase and acquire all of said properties and to assume all contracts (1) relating to supplying water, and (2) in effect on the date of the transfer between the Bar Harbor Water Company and any person, firm, or corporation;
4. That upon the transfer of the water system assets by the Bar Harbor Water Company to the Town of Bar Harbor, the Bar Harbor Water Company is authorized pursuant to 35-A M.R.S.A. § 1104 to

discontinue the service that it is providing to the public in the Town of Bar Harbor, Hancock County, Maine, to be liquidated, and to be dissolved;

5. That upon the transfer of the water system assets to the Town of Bar Harbor, it shall assume and be responsible for providing water service to the public in the Town of Bar Harbor, Hancock County, Maine;
6. That until further order of this Commission, the Town of Bar Harbor shall provide water service in the area now being served by the Bar Harbor Water Company pursuant to and in accordance with the filed tariffs, including terms and conditions of the Bar Harbor Water Company; provided, however, that the Town of Bar Harbor, shall, upon transfer of the water system assets to it, file said tariffs, including terms and conditions, with the Commission under its own name;
7. That the Bar Harbor Water Company shall submit to the Commission a copy of its final balance sheet within 60 days of the date of the sale; and
8. That the Town of Bar Harbor shall supply the Commission the following within 60 days of the date of the purchase:
 - a) A copy of the entry on the books of the Town of Bar Harbor, recording the acquisition; and
 - b) A copy of the opening balance sheet of the Town of Bar Harbor following acquisition.

Dated at Augusta, Maine, this 28th day of August, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond

COMMISSIONERS ABSENT: Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.